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No. 94-1938

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

BARRICK GOLD EXPLORATION, INC., and
CREIGHTON HILLS COAL CO., INC.,
Petitioners

v.

MARTY D. HUDSON, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE RESPONDENT TRUSTEES IN OPPOSITION

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QUESTION PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.*, violates the Due Process Clause of the Fifth Amendment by imposing prospective obligations on petitioners to provide health care to their retired miners and to contribute prefunding premiums to the UMWA 1992 Benefit Plan, notwithstanding certain previous contractual payments made by petitioners in accordance with their voluntarily-assumed obligations under the collective bargaining agreement in effect from February 1, 1988 through February 1, 1993.

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BRIEF FOR THE RESPONDENT TRUSTEES IN OPPOSITION

Respondent Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund") and Trustees of the United Mine Workers of America 1992 Plan ("1992 Plan") (collectively, "Trustees") submit this brief in opposition to the petition for a writ of certiorari in this case.

STATEMENT OF THE CASE

Following an extensive inquiry in 1990 by the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission") and its own thorough review of the coal industry's collectively-bargained multiemployer retiree health care trusts, Congress passed the Coal Industry Re-

tiree Health Benefit Act of 1992 ("Coal Act" or "Act"), 26 U.S.C. §§ 9701 *et seq.* Through the new statute, Congress sought to resolve the severe financial crisis that threatened the collectively-bargained trusts. For more than 40 years, these multiemployer health benefit plans had provided retiree health care to retired miners and their dependents, in accordance with a series of collective bargaining agreements between the United Mine Workers of America ("UMWA") and various employers in the bituminous coal industry. These agreements are known as the National Bituminous Coal Wage Agreements or "NBCWAs".

The financial crisis, which reached its peak during the decade preceding the Coal Act's passage, jeopardized the continued provision of health care benefits to more than 100,000 retired miners and their dependents. The crisis had several causes. First, as each successive NBCWA expired, numerous employers that had signed the 1978 NBCWA or later NBCWAs and remained in business refused to sign new NBCWAs and refused to continue providing health care to their former employees. Instead, they sought to dump thousands of their retirees into the existing multiemployer health benefit plans, where their health care would be provided by other employers.[1] As a result, the trusts incurred additional liabilities and the remaining NBCWA coal operators had to pay higher contributions to finance coverage for retirees who had been abandoned by their former employers. This created a strong financial incentive for the remaining NBCWA coal opertors to follow suit, thereby further undermining the trusts' financial base. Second, numerous coal industry workers retired from com-

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[1] This kind of dumping of retirees is discussed in *District 29, UMWA v. UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988); and *UMWA v. Nobel*, 720 F. Supp. 1169 (W.D. Pa. 1989), *aff'd*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

panies that went out of business. These "orphan" retirees were considered an industry-wide responsibility that fell on an increasingly small number of employers. Third, several employers negotiated so-called "non-conforming agreements," which purportedly allowed the companies to reduce or discontinue contributions to one or both of the multiemployer health benefit plans. Although these agreements now have been held ineffective to relieve these employers of their prior contractual obligations,[2] they nonetheless contributed to the financial strain on the multiemployer plans. Finally, the cost of providing health benefits increased dramatically, and that increase significantly affected the UMWA health plans' annual expenses.

The uncertainty of continued health benefits for active and retired UMWA miners led to substantial labor strife in the nation's bituminous coal mining regions. One of the most serious of these labor disputes, a ten-month strike by the UMWA against the Pittston Coal Company, was settled only after the Secretary of Labor intervened. As part of the settlement, the Secretary established the Coal Commission to analyze the retiree health care crisis and recommend a solution.

In November 1990, the Coal Commission submitted its findings and recommendations. In its report, the Coal Commission stated that ensuring the continued provision of health benefits to UMWA retirees and their dependents should be the primary objective of any proposed solution. The Commission also recognized that the collective bargaining process was inadequate to provide a long-term solution to the health care crisis. Accordingly, the Commission urged that Congress adopt a legislative solution to the crisis.

Following the Coal Commission's report, Congress undertook its own intensive two-year examination of the sub-

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[2] *See UMWA 1974 Pension Trust v. Pittston Co.*, 948 F.2d 469 (D.C. Cir.), *cert. denied*, 113 S. Ct. 3039, 3040 (1993).

ject. The Coal Act was the final product of those deliberations. In enacting the Coal Act, Congress found that:

> it is necessary to modify the private health care benefit plan structures for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

106 Stat. 3037, *see* 26 U.S.C. § 9701 (historical note). Congress further stated that the policy of the Coal Act is:

> to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Id.

In the Coal Act, Congress created two new trust funds for the provision of health care benefits to retired miners and their dependents. The Combined Fund, into which the two pre-existing collectively-bargained multiemployer health care trusts were merged, is designed to continue health care coverage for the beneficiaries of the pre-existing trusts. *See* 26 U.S.C. §§ 9702(a)(2), 9703(a), (b), (f). The second new fund, the 1992 Plan, is an entirely new entity designed to provide benefits to eligible retirees who are not beneficiaries of the Combined Fund and who are not receiving health care coverage directly from their former employers. *See* 26 U.S.C. § 9712(a), (b). In addition, the Coal Act required companies that were providing retiree health benefits through an individual employer plan pursuant to the NBCWAs to continue providing benefits to the plan's current beneficiaries. *See* 26 U.S.C. § 9711.

Two basic policy decisions are reflected in the Coal Act. First, Congress decided to solve the retiree health

care crisis on a prospective "going forward" basis, outside the ambit of the collective bargaining process. To accomplish this "fresh start," Congress provided a specific date —February 1, 1993, the termination date of the 1988 NBCWA—on which the old collectively-bargained system would be replaced entirely by the statutory system. *See e.g.*, 26 U.S.C. § 9702(a)(2).[3] For the period prior to February 1, 1993, the Coal Act left existing contractual obligations unaffected. The statute explicitly provided that all pre-February 1, 1993 obligations to the health care trusts under the NBCWAs would be governed exclusively by the collective bargaining agreements. *See* 26 U.S.C. § 9708. Congress recognized, however, that the 1988 NBCWA provided for contractual withdrawal liability payments from employers that, for any reason, ceased to have an obligation to contribute to the health care trusts. At the same time Congress was committed to the proposition that liability to the Combined Fund arising *on or after* February 1, 1993 would be governed exclusively by the Coal Act. Congress therefore expressly provided that the statutory merger of the pre-existing trusts into the Combined Fund "shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement." 26 U.S.C. § 9702(a)(2).

Second, Congress decided that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992) (reproducing proposed conference committee report). The Coal Act implements this "pay for your own" policy (i) by requiring companies to continue their own individual employer plans to provide ongoing benefits to their own post-1975 retirees, 26 U.S.C.

[3] All issues concerning the provision of health care benefits to retirees becoming eligible for retirement *after* February 1, 1993 were left to the collective bargaining process.

§ 9711; (ii) by "assigning" companies financial responsibility for their own retirees in the Combined Fund, 26 U.S.C. §§ 9704, 9706; and (iii) by requiring any existing companies whose retirees receive benefits from the 1992 Plan to pay to the Plan a per beneficiary premium sufficient to cover the health care costs of such retirees, 26 U.S.C. § 9712.

Petitioners were signatory to the national collective bargaining agreement in effect when the Coal Act was enacted, the 1988 NBCWA. Under the Coal Act, petitioners have three principal obligations: (1) as 1988 NBCWA signatory operators, they were required to make interim contributions to the Combined Fund to help finance the first eight months of the Combined Fund's operations, from February through September 1993 (*see* 26 U.S.C. § 9704(i)(1)(A)); (2) as 1988 NBCWA signatory operators that were each contractually obligated to maintain an individual company health plan through February 1, 1993, they are required to continue the plans in effect after February 1, 1993, for the benefit of their own retirees and their dependents (*see* 26 U.S.C. § 9711); and (3) also as 1988 NBCWA signatory operators, they are required to pay annual prefunding premiums to the 1992 Plan based on the number of beneficiaries in their individual company plans (all of whom could become beneficiaries of the 1992 Plan should petitioners not provide their health care directly through the individual company plans) (*see* 26 U.S.C. § 9712(d)).

On January 29, 1993, three days before the Combined Fund and 1992 Plan were to begin providing benefits, petitioners, together with two other companies, filed this action against the Trustees of the Combined Fund and Trustees of the 1992 Plan. Petitioners alleged that the Coal Act violated the Due Process and Takings Clauses of the Fifth Amendment. Initially, petitioners focused their objections on their obligations to make interim contributions to the Combined Fund under Section 9704(i)

(1)(A) of the Coal Act. In this Court, however, they have abandoned that position. Pet. 16 n.1. Petitioners now focus on their obligations to maintain their individual company health plans under Section 9711 and to pay annual prefunding premiums to the 1992 Plan under Section 9712. With respect to those obligations, they now make the same arguments that they previously made with respect to the Combined Fund. They contend that somehow they should be relieved of their Coal Act obligations because, in accordance with their voluntarily undertaken obligations under the 1988 NBCWA, they paid contractual withdrawal liability to the collectively-bargained multiemployer health trusts when they permanently ceased mining operations during the term of the 1988 NBCWA, before the Coal Act was enacted. They maintain that, because the Coal Act does not authorize them to offset, reduce, or eliminate their statutory obligations by virtue of their prior contractual payments, the Act is unconstitutional.

The facts concerning petitioners' contractual withdrawal liability payments are not in dispute. Petitioners voluntarily agreed to be bound by the terms of various NBCWAs to obtain the benefits associated with those agreements, including in particular the labor of UMWA-represented miners. Among the obligations to which petitioners agreed in 1988 were the "contractual withdrawal liability" provisions of the 1988 NBCWA, which required each signatory employer, if it ceased, for whatever reason, to have an obligation to contribute to the multiemployer health care trusts, to make a lump-sum payment to the affected trusts in an amount essentially equal to the employer's contributions to the trusts during the preceding five years.[4]

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[4] The contractual withdrawal liability provisions attempted to ensure that, if an employer sought to withdraw and thus to "dump" its health care costs on other signatory employers, it would make at least some payment to reduce the financial burden it was leaving behind.

Due to their own decisions and actions, petitioners permanently ceased NBCWA-covered operations *during the term of the 1988 NBCWA*, and thus incurred contractual withdrawal liability. The contractual withdrawal liability payments to which petitioners had agreed in the 1988 NBCWA became due and owing before the Coal Act was passed and without regard to any provision in the statute.

In June 1993, the district court ruled that the Coal Act did not violate the Due Process Clause, and granted summary judgment for the respondent Trustees and for the United States, which had intervened as a defendant to defend the validity of the statute. In particular, after reviewing the well-settled standards for judging petitioners' various due process claims (Pet. App. 41-43), the district court rejected petitioners' argument that the Coal Act is arbitrary and irrational because it does not provide a credit for petitioners' prior contractual payments. As the district court explained:

> Plaintiffs contractually agreed to be bound by the withdrawal liability provisions when they signed the 1988 NBCWA. . . .
>
> * * *
>
> Congress rationally found that the practice of operators withdrawing from the industry or otherwise terminating their obligation under the NBCWA, resulting in the transfer of their employees to the 1974 Plan, substantially contributed to the underfunding problems experienced by that Plan. . . . Congress did not act irrationally in preserving the withdrawal liability provision in the NBCWA or in failing to provide for a refund of withdrawal liability payments.

Pet. App. 53-55.

The court of appeals affirmed. The court observed that petitioners' contractual withdrawal liability payments "were not mandated by the Coal Act at all" but by petitioners' own collective bargaining agreements. Pet. App. 19. Noting that petitioners "do not directly contend that Congress

acted unconstitutionally in imposing" statutory obligations on them, the court remarked that petitioners essentially were asking the court to analyze "the rationality of not including in a legislative enactment every provision that might rationally have been included." Pet. App. 9, 19. As the court said, "[t]he number of rational provisions that might conceivably have been added to the Coal Act to ameliorate the burden on the plaintiffs or other employers would appear to be limited only by the ingenuity of counsel." Pet. App. 19. The court found no basis for petitioners' claim of a due process violation.[5]

ARGUMENT

The court of appeals' decision is correct, and further review is not warranted.

I. THE CASE PRESENTS NO UNRESOLVED OR CONTROVERSIAL QUESTION OF FEDERAL CONSTITUTIONAL LAW

There is simply no unresolved or controversial question of federal constitutional law presented here. Consideration of the issues raised by petitioners in their petition for a writ of certiorari will not resolve any important question of federal law that has not already been settled by this Court.

First, the lower courts have uniformly upheld the Coal Act against claims that it violates the Due Process Clause. During the past two years, due process challenges to the Coal Act have been asserted in a number of cases. These cases have presented diverse fact patterns and focused on various specific provisions of the Act. As petitioners concede (Pet. 21-22 n.2), every court that has reviewed a due process challenge to the Coal Act, including two courts of appeals and several district courts, has found

[5] In the courts below, petitioners also raised a Takings Clause challenge to the Coal Act. They have not pursued this portion of their case in this Court.

that the Coal Act satisfies the requirements of the Due Process Clause. *See*, in addition to the decision below, *LTV Steel Company, Inc. v. Shalala*, 1995 WL 226252 (2d Cir. April 17, 1995), *aff'g*, 154 B.R. 416 (S.D.N.Y. 1993) and 163 B.R. 955 (S.D.N.Y. 1993), *cert. pending on other grounds*, No. 94-6024 (filed July 14, 1995); *Blue Diamond Coal Co. v. Shalala*, 174 B.R. 722 (E.D. Tenn. 1994), *appeal pending*, No. 94-6539 (6th Cir.); *Holland v. Keenan Trucking Co.*, No. 2:93-1223, Mem. Op. (S.D. W. Va. March 15, 1995); *Templeton Coal Co. v. Shalala*, 882 F. Supp. 799 (S.D. Ind. 1995), *appeal pending*, No. 95-2306 (7th Cir.); *Davon, Inc. v. Shalala*, No. TH 93-1980C-T/H, Entry Regarding Defendant's Motion to Transfer Venue and the Parties' Cross-Motions for Summary Judgment (S.D. Ind. April 4, 1995), *appeal pending*, No. 95-1960 (7th Cir.); *Holland v. High-Tech Collieries, Inc.*, No. 93-0158-C, bench ruling (N.D. W. Va. March 28, 1995); *Unity Real Estate Co. v. Hudson*, 1995 WL 373281 (W.D. Pa. June 7, 1995) (granting motion for preliminary injunction on Takings Clause grounds but rejecting due process arguments).

Second, the Coal Act issue presented by petitioners involves only one specific application of a comprehensive statutory scheme designed to protect the health care benefits of retired miners and their dependents. As the court of appeals noted, petitioners do not "directly contend that Congress acted unconstitutionally in imposing" obligations on it. Pet. App. 9. Although petitioners assert that "the Court of Appeals misconstrued their assertions" because they "never acknowledged that Congress rationally imposed the Coal Act's burdens on them in the first instance" (Pet. 33-34 n.6), the fact is that petitioners' only complaint is that Congress failed to properly weigh certain facts concerning their payment of contractual withdrawal liability under the 1988 NBCWA. Only petitioners are challenging the Coal Act's constitutionality on this ground and, accordingly, this case does not have the broad significance that petitioners claim.

In apparent recognition of the insignificance of their specific Coal Act challenges, petitioners' Question Presented does not directly seek review of these contentions. Instead, petitioners attempt to create a generic issue by suggesting that the Court grant review to decide whether the Due Process Clause guarantees any substantive rights. Pet. 21. But the answer to this question cannot possibly help petitioners. If the answer is negative, petitioners' due process challenge fails automatically, and no further inquiry is needed. If the answer is positive, the Coal Act is to be reviewed under the "arbitrary or irrational" standard set forth in this Court's decisions and correctly applied by the court of appeals. In that event, petitioners' due process challenge would be rejected for the very reasons set forth by the courts below, namely, that it was not arbitrary or irrational for Congress to omit from the Coal Act some special dispensation for 1988 NBCWA signatories that paid contractual withdrawal liability. Petitioners' Question Presented attempts to assume away the *real* issue in the case, by asserting as if it were a given that the Coal Act is arbitrary and irrational as applied to petitioners. That, however, is the very issue that was actually litigated below and properly resolved against petitioners by two courts, both of which proceeded from the premise that the Due Process Clause protects persons against arbitrary and irrational economic legislation. *See* Pet. App. 14-17 and 41-43. There is no occasion for this Court to grant review to resolve a question that not only has already been settled by earlier decisions but that would not help petitioners even if it were decided in their favor.

Nor is there any need to review this case in order to clarify the applicable standards for evaluating due process challenges. As petitioners concede, and as the lower courts noted (Pet. App. 14 and 41), the "standards for evaluating due process claims are well settled." Pet. 22. Just two years ago, in a portion of the *Concrete*

Pipe opinion joined by every member of the Court (*see Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, —— U.S. ——, 113 S. Ct. 2264, 2286-89 (1993)), the Court summarized and applied those well-known rules. Nowhere in their petition do petitioners suggest that the courts below misunderstood or misapplied these standards. Instead, petitioners essentially request that the Court change the settled standards, which petitioners describe as "nominal," in order to discover a substantive due process violation in this case. Pet. 22. The problem, however, is not with the standards but rather with petitioners' perception of the "arbitrary and irrational test" as "stringent." Pet. 35.

As shown in the following section, the court of appeals correctly applied the governing law in concluding that the Coal Act does not violate the Due Process Clause and that Congress is not constitutionally required to provide that petitioners could use their contractual withdrawal payments, which were voluntarily made pursuant to a private contract, to reduce or eliminate their Coal Act obligations.

II. THE COURT OF APPEALS CORRECTLY RULED THAT THE COAL ACT IS NEITHER ARBITRARY NOR IRRATIONAL AND DOES NOT VIOLATE PETITIONERS' FIFTH AMENDMENT DUE PROCESS RIGHTS

Petitioners' only complaint is that Congress failed to properly weigh certain facts concerning their pre-existing contractual obligations under the NBCWAs. Specifically, petitioners claim that the "particular manner" in which Congress imposed Coal Act obligations, *i.e.*, without providing refunds based on previous contractual withdrawal liability payments, does not rationally further any legislative objective. Pet. 33. As the court of appeals noted (Pet. App. 9), petitioners' claim is that "Congress was

constitutionally required to provide for a refund, credit, or offset in respect of any contractual withdrawal liability payments made to the multi-employer plans under the 1988 agreement." Pet. App. 9.

The Due Process Clause, however, requires neither an offset nor a refund of contractual withdrawal liability payments to reduce or eliminate petitioners' Coal Act obligations. As the court below recognized:

> It is important to remember, in this connection, that the big-ticket expenditures for which the plaintiffs would like to receive credit—the contractual withdrawal liability payments under the 1988 agreement —were not mandated by the Coal Act at all. It would doubtless have been rational for Congress to have decided that employers should receive a credit for such voluntarily-incurred obligations, but we would be taking on quite a task if we began analyzing the rationality of not including in a legislative enactment every provision that might rationally have been included.
>
> The number of rational provisions that might conceivably have been added to the Coal Act to ameliorate the burden on the plaintiffs or other employers would appear to be limited only by the ingenuity of counsel. Must each omission be justified as rational? Must Congress, in other words, have a rational basis for failing to act? We doubt it. . . .

Pet. App. 19.

As they must, petitioners concede that, consistent with the Due Process Clause, "Congress can upset settled expectations and impose burdens disproportionately so long as it has a rational basis for the choices it makes." Pet. 32. As this Court has held, "mathematical precision in the fit between justification and means" of legislation is not required. *Concrete Pipe*, 113 S. Ct. at 2288. Further, Congress has "absolutely no obligation to select the scheme that a court later would find to be

the fairest, but simply one that was rational and not arbitrary." *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 477 (1955).[6] Moreover, "the law need not be in every respect logically consistent with its aims to be constitutional," *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-88 (1955), and legislative "line drawing" does not violate substantive due process even if "some persons who have almost equally strong claims to particular treatment are placed on different sides of the line." *United States v. Lee*, 957 F.2d 778, 782 (10th Cir.), *cert. denied*, 113 S. Ct. 475 (1992).

In any event, it was plainly logical for Congress to decide that prior NBCWA payments, including contractual withdrawal liability payments, should not be a basis for reducing or eliminating Coal Act obligations. Consistent with the Coal Commission's recommendations, Congress determined that the crisis facing the health benefit trust should be addressed on a "going forward" basis that did not attempt to readjust the NBCWAs' division of rights and liabilities.[7] Congress decided, in other words, that

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[6] *See also Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124 (1978) (the "Due Process Clause does not empower the judiciary to 'sit as a superlegislature to weigh the wisdom of legislation' "); *Carolene Products Co. v. United States*, 323 U.S. 18, 29 (1944) (where the court finds that Congress had power to decide its own course in enacting legislation, the court need look no further).

[7] This determination is expressed in numerous provisions of the Coal Act. For example, Congress established a specific date on which the pre-existing funds would be merged into the Combined Fund. 26 U.S.C. § 9702(a)(2). It also provided that any deficit the prior funds had as of that date would be the sole responsibility of the 1988 NBCWA coal operators. 26 U.S.C. § 9704(i)(1)(B). The "fresh start" decision is also evidenced by the fact that, apart from the retirees specifically covered by the statute, Congress elected to leave decisions concerning other coal industry retirees to the collective bargaining process.

in allocating responsibility for the cost of retiree health care under the Coal Act, it would not seek to evaluate the inevitable special pleadings from individual 1988 signatories that, because of their allegedly unique experiences under the 1988 NBCWA, they should be entitled to some unusual relief from the new statutory plan. Instead, the Coal Act is uniform in that no employer is allowed to use its pre-Act payments to the multiemployer retiree health care trusts to reduce or eliminate its Coal Act obligations.

In light of the Coal Act's prospective approach, it was entirely rational for Congress to decide that *no* prior NBCWA payment could be used to reduce or eliminate Coal Act liabilities. Such "rough justice" clearly satisfies the rationality requirement of the Due Process Clause. Congress simply is not constitutionally required to engage in precise calibration of statutory obligations and pre-existing contractual liabilities.

Contrary to the impression that may have been created by petitioners (*see, e.g.*, Pet. 17-18 and 34), Congress did not single out withdrawal liability payments and decide that they alone would not be credited against Coal Act obligations. Nor are petitioners correct in their repeated assertions that the Coal Act gave "a credit to over ninety-seven percent of the other 1988 NBCWA signatories by expressly insulating them from the very same contractual withdrawal liabiiity" that petitioners had paid. Pet. 18, 28. The Coal Act merely provided that the merger of the pre-existing collectively-bargained health care trusts into the Combined Fund on February 1, 1993 would not be deemed to be an event triggering contractual withdrawal liability.[8]

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[8] Under the 1988 NBCWA, the trigger for withdrawal liability was in the control of each contracting employer. So long as an employer continued to make contributions to the health benefit trusts, it had not withdrawn. The 1988 NBCWA did not specifically discuss whether and to what extent liability would attach if the pay-

Similarly, petitioners are wrong on two fronts in arguing that the Coal Act "imposed a variety of burdens on the Companies which wholly deprived them of the benefits they were to receive from" their "pre-enactment" contractual withdrawal payments. Pet. 27.

First, there was no contractual assurance in the 1988 NBCWA that, after the termination of that agreement on February 1, 1993, petitioners could dump their own retirees from their individual company plans into one of the health benefit trusts to obtain benefits paid for by other employers. The 1988 NBCWA, like all the NBCWAs before it, was silent on the question of whether future collective bargaining agreements would provide for the continued existence of the health benefit trusts or even whether there would be future collective bargaining agreements at all. Petitioners' payment of contractual withdrawal liability under the 1988 NBCWA did not in any sense confer on them a right to dump their retirees into the health care trusts after February 1, 1993.

Second, petitioners incorrectly portray the contractual withdrawal liability provisions in the 1988 NBCWA as a substitute for, or an alternative to, continued participation in the multiemployer health benefit trust. The collective bargaining agreement did not provide for contractual withdrawal liability as an escape hatch for employers that decided they would rather not continue to contribute to the multiemployer trusts. Rather, the provisions were intended to provide a disincentive to withdrawal, together with at least a partial protection for the

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ment obligation was terminated not by a company's decision to cease operations, but rather by an external decision to merge the trusts into another entity (*i.e.*, by a situation in which no contributions were due to the trusts because they ceased to exist). To avoid any argument that companies that continued to operate under an NBCWA somehow "withdrew" because Congress eliminated the health benefit trusts, the Coal Act explicitly provided that the statutory merger would not be deemed to trigger any obligation to pay withdrawal liability.

trusts' financial stability in the event that withdrawals nevertheless occurred.

Finally, even if petitioners' characterization of the contractual withdrawal liability provisions were accurate, it still would not affect the validity of the Coal Act. This Court's precedents show that Congress properly could decide to remove the financing of health care for the trusts' beneficiaries from the collective bargaining process, even if doing so upset petitioners' contractual expectations. As the Court stated in *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976):

> our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. . . . This is true even though the effect of the legislation is to impose a new duty or obligation based on past acts.

See also Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984).

There is nothing constitutionally significant about petitioners' payment of contractual withdrawal liability under the 1988 NBCWA. Petitioners voluntarily became bound by the 1988 NBCWA and agreed to pay contractual withdrawal liability if certain conditions were met. Petitioners cannot now shift their past contractual obligations to other 1988 NBCWA signatories by claiming a "refund, credit, or offset." Though petitioners would have preferred a program that allowed them to use their prior contractual payments to reduce their Coal Act obligations, Congress' decision to adopt a different system is rational and fully comports with the Due Process Clause. It simply cannot be argued that Congress acted arbitrarily in deciding that, over the long term, Coal Act obligations should not be based on the amount, nature, or timing of prior contractual payments to the health care trusts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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